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(Reserved) (Bench No.1)

CENTRAL ADMINISTRATIVE TRIBUNAL,

ALLAHABAD.

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Registration No. T.A. 520 of 1986

Harish Chandra Srivastava. . vs. . Union of India and
others.

Hon'ble Justice Mr. S.Zaheer Hasan, Vice Chairman.

Hon'ble Mr. Ajay Johri, Member (A).

(Delivered by Hon. S.Zaheer Hasan, V.C.)

Civil Appeal No. 114 of 1984, pending in the court of District Judge, Gonda, has been transferred to this Tribunal under Section 29 of the Administrative Tribunals Act (No. 13 of 1985).

Harish Chandra Srivastava, to be described as the plaintiff, filed a suit on 30.7.1982 against the Union of India through General Manager, N.E.Railway, Gorakhpur and others for injunction restraining the defendants from transferring the plaintiff from Gonda Goods Shed to Munderva on the basis of order dated 28.5.1982 and for cancellation of the aforesaid order. Plaintiff's case is that he was a permanent senior Goods Clerk at Gonda Goods Shed. It is said that one Sri P.P.Pathak was posted there as Chief Goods Clerk who developed illwill against the plaintiff and started making false complaints and prejudicing the senior officers against him. On 30.3.1981 Mr. Pathak

issued a memo to the plaintiff informing him that he was called for interview by D.R.M. (C), N.E. Railway, Lucknow regarding some complaint. The plaintiff went to Lucknow and stayed there for 21 days and ultimately it was revealed that the D.R.M. had never called him. One Sri O.P. Gupta, A.C.S. was a friend of Sri P.P. Pathak and he also got annoyed with the plaintiff. Sri Pathak tried to involve the plaintiff in a case of excess removal of 75 bags ~~am~~ of salt which proved baseless. Subsequently he tried to involve the plaintiff in a wagon card label case and in another case of wrong replacement of wagons. After inquiry the plaintiff was found innocent. As a result of this inquiry Shri Pathak and few other officers became annoyed with plaintiff and they gave false information to the senior Officers and they managed to get the transfer order passed under which the plaintiff was ordered on 28.5.1982 to proceed to Munderva Station from Gonda on transfer. The plaintiff made representation to D.R.M., but nothing was done in the matter. One Surajpal Tewari proceeded on leave; so, it was ordered that the plaintiff should join at Munderva till Sri Surajpal Tewari returned from leave. Due to exigencies of service the order could be passed. The only point contended by the plaintiff's counsel was that this order was based on malice, so, it should be quashed.

In the written statement it was denied that the officers of the Railway Department were on friendly terms with Mr. Pathak and they bore any malice against the plaintiff. The plaintiff has failed to give any specific details in that connection. According to

the defendants the transfer order is neither malicious nor prejudicial and it was passed on administrative grounds in public interest. One Sri S.D.Pandey took over charge on 2.6.1982 and ultimately on 29.7.1983 the plaintiff joined at Munderva Railway Station. On 9.11.1984 the plaintiff was transferred back to Gonda. He filed this suit on 30.7.1982. The plaintiff moved a writ petition No. 5222 of 1982 in the ^{Lucknow Bench of} Hon'ble High Court of Judicature at Allahabad, claiming in addition to other relief a relief for cancellation of his transfer dated 28.5.1982. The said writ petition was decided on 20.10.1982, that is, during the pendency of this suit. Hon'ble Judges of the High Court dismissed the writ petition of the plaintiff on merits and held that the order of transfer dated 28.5.1982 was a valid ~~and binding on the plaintiff~~. In this way the same matter cannot be agitated in the suit; so, the suit of the plaintiff was not maintainable. The suit was dismissed. The plaintiff filed the appeal which, as stated above, has been transferred to this Tribunal.

From the above it would appear that one Surajpal Tewari proceeded on leave. So, the plaintiff was transferred on 28.5.1982 from Gonda to Munderva till Sri Tewari ^{from leave} returned. On 2.6.1982 one S.D.Pandey took over charge at Gonda. On 29.7.1983 the plaintiff joined at Munderva. On 9.11.1984 he was transferred back to Gonda. So, plaintiff's prayer that the defendants be restrained from transferring the plaintiff has become infructuous.

Learned counsel for the plaintiff contended that the order of transfer should be declared ~~to be~~^{as} illegal on the ground of malice. No other argument was advanced before us. So far as the question of malice is concerned, necessary details have not been given, and in this way the defendants showed their inability to answer the charge of malice for want of specific details. The dispute was with one P.P. Pathak, Chief Goods Clerk. It has not been shown as to who was the person who transferred the plaintiff and how Mr. Pathak influenced other persons. The persons against whom the charge of malice has been made have not been made party. The plaintiff has not claimed any damages in this suit; nor the charge of mala fide could be established by him. So, the suit was rightly dismissed. This suit was filed on 30.7.1982. On 18.10.1982 the plaintiff filed a writ petition in the Hon'ble High Court in which it was prayed that a writ be issued quashing the impugned order of transfer dated 28.5.1982. On 20.10.1982 a Division Bench of the Hon'ble High Court dismissed the writ petition with a finding that the petitioner was posted at Gonda Station since January 1979 and the impugned order ~~was~~^{is} dated 26.5.1982 could not be condemned as arbitrary inasmuch as the plaintiff had completed three years at that station and it was immaterial that some other persons who had completed more than three years at the same station were not transferred. In spite of the fact that he had challenged

the order of transfer in the suit which was pending, the plaintiff rushed to the High Court and there also (in the writ petition) he challenged the order ~~of~~ transfer. The responsibility of good administration is that of the Government and the Courts would not judge propriety or sufficiency of such opinion by any objective standards except where subjective process is vitiated by mala fide etc. Transfers are the exigencies of service and normally the orders of transfer are outside the purview of examination by a court of law. Transfer being an implied condition of public service, the appointing authority is the best judge to decide how to distribute its manpower. A variety of factors may weigh with the authorities in this connection; viz., reputation, period of stay, some one proceeding on leave and then filling in that post for the time being and a number of other grounds which may be clubbed under the head 'exigencies of service'. It is not for us to adjudicate the feasibility or propriety of transfer, but the power of transfer must be exercised honestly, in a bona fide manner and reasonably. It must be used in the interest of public service and not for extraneous considerations or oblique motive or to accommodate another man or to do away with one who does not suit to the authorities etc. Specific allegations regarding malice should be made and proved. Both these conditions have not been fulfilled in the case before us. So, to our mind, neither justice nor law has suffered.

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In the result, this application (Civil Appeal
No. 114 of 1984) is dismissed with costs on parties.

November 18th, 1986. Vice Chairman.
R.PR.

~~Member(A).~~